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File No. O-Factories/43

Legal Department

A **BRANCH**

Subject:— Prisons under the Factories Act, 1934.

P-5/E

File No. O-Factories/43

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C O N T E N T S.

Legal Department File No. O.Factories / 43

Sr.No.	R.I./O.No.	Subject	page
		Opinions under the Factories Act, 1934.	
1.	O.No. 6725 7-10-1943	Sections 2(h), 19, 32(g), 33(2) 41 & 43 Whether Creche nurses & Ayahs, (2) watermen and (3) Bhangis and Halalkhores employed in factory are workers within the meaning of S. 2(h) and if so whether these persons can be exempted from the Provisions of Chapter IV.	1-4.

S.C. 11/7
5 copies.

14-7

Submitted

under the Factories Act, 1911, (now ropealed) the Director of Industries had held that watchman and peons and messengers attached to supervising and clerical establishment cannot be deemed to be employed in factories within the meaning of section 2(2) (d) of the Act. Nor did he think that they can be dealt with under sec. 29 of the Act. The R.L.A. agreed with the Director of Industries (vide R.L.A.'s opinion No. 212 dated 29th January 1923 pp. 77-81 of P. & S.D. File 3224pt. I). The L.D. Vol. E. 15/8 does not contain any notes on the opinion). The definition ~~from~~ of employed in the factories Act, 1911, is different from the definition of "worker" in section 2 (h) of the Factories Act, 1934. The former definition is based upon the definition used in the English Act (see sec. 152 of the Factories and Workshops Act, 1901, 1 Edw. 7 C. 22).

3. The questions now for the consideration of the R.L.A. are (1) whether the following persons employed in a factory are workers within the meaning of section 2(b) of the Factories Act, 1934.

(a) Creche nurses and ayahs,

(b) watermen (persons employed for supplying drinking water), and

(c) Bhangis and Halalkhores.

(2) If so, whether these persons can be exempted from the provisions of Chapter IV by bringing them under section 43 of the Act .

4. Question 1(a).- Employment of creche nurses and ayahas has been necessitated by P. & S.D. Notfn. No. 1262/34 dated 14th June 1938 which has been issued under clause (g) of section 32 and sub-section (2) or sec. 33 of the Factories Act, 1934. Under section 2(h) of the

Factories Act "Worker" means a person employed, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work whatsoever incidental to or connected with the manufacturing process, but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on; A person employed in a factory would become a worker if he conforms to the following provisions i.e. he must be employed .-

(i) in any manufacturing process, or

(ii) in cleaning any part of the machinery or premises used for a manufacturing process, or

(iii) in any kind of work whatsoever incidental to or connected with the subject of the manufacturing process or connected with the subject of the manufacturing process.

As the word "means" has been used in defining the word "worker" the definition is intended to be exhaustive. It will not therefore extend to these persons who are employed in a factory but whose work does not conform to the description given in sec. 2(h). It is true that Creche nurses and ayahas work in a factory. But their work consists in attending to children of women workers who are engaged in the factory (vide rule 5 of the rules notified under p. & S.D. No. 1262/34 dated 14th June 1938). The nature of this work is not of kind described in sec. 2(h). of the Act. The creche nurses and ayahs are not therefore workers within the meaning of sec. 2(h) of the Act read with clause (g) of the section. The view taken by the Director of Industries is correct. (Pl. see p. 41 of the Factories Act by P.R.Aiyar.)

Question No.1(b) .- Waterman are employed in a factory in compliance with the provisions of sec. 19 of the Act and rules 30 to 32 of the Vombay Factories Rules, 1935. The waterman cannot be deemed to be a worker under the Act as the

nature of his work does not fall under any of the descript.
of works defined in sec. 2(h) read with clause (g) of sec. 2.

Office of the R.L.A.

R.L.A. agrees throughout with the conclusions of the Chief Inspector of Factories.

Sd/-P.N.M.
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-Remembrancer of Legal Affairs.

U.R. to P. & S.D. , No. 6725 , dated the 7th October 1943.

S.C 10/7
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